

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

ABIMAEL MANSO-DIAZ

Plaintiff

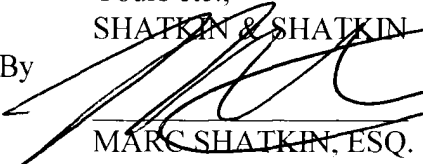
v.

NOTICE OF CROSS-MOTION
CIVIL ACTION NO. 05-192E
JUDGE McLAUGHLIN

JAMES F. SHERMAN, WARDEN
McKEAN FEDERAL CORRECTION INSTITUTION
Defendant

Plaintiff hereby cross-moves this court pursuant to FRCP 15 seeking leave granting permission to file and serve an amended complaint; plaintiff also submits this declaration and exhibits in response to defendant's motion herein.

Dated: October 31, 2005
Buffalo, NY

Yours etc.,
SHATKIN & SHATKIN
By 
MARC SHATKIN, ESQ.
Attorneys for plaintiff
434 Delaware Avenue
Buffalo, New York 14202
716-842-0550

TO: UNITED STATES ATTORNEY
Attorneys for defendants
700 Grant Street, Suite 4000
Pittsburgh, Pennsylvania 15219

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

ABIMAEI MANSO-DIAZ

Plaintiff

CIVIL ACTION NO. 05-192E
JUDGE McLAUGHLIN

v.

JAMES F. SHERMAN, WARDEN
McKEAN FEDERAL CORRECTION INSTITUTION
Defendant

DECLARATION OF MARC SHATKIN IN RESPONSE TO DEFENDANT'S MOTION

Marc Shatkin, Esq. hereby declare and states as follows:

1. I am an attorney duly licensed to practice law in the United States District Court, Western District of New York, am attorney for plaintiff herein and submit this declaration in response to defendant's motion to compel, and in support of her cross-motion to compel. Please note that my application to be admitted *Pro hac vice* in the Western District of Pennsylvania is being submitted simultaneously with these responding papers.
2. Rather than provide the court with a complete statement of what plaintiff believes the facts are regarding this claim, discrepancies with defendants' version will be addressed when it pertains to plaintiff's arguments(s).

BIVENS CLAIM/AMENDED COMPLAINT

3. While plaintiff concedes that there is no claim of violation of state law by the Warden, and McKean is a Federal prison, 42 U.S.C. 1983 would not be applicable.

4. However the court may construe the Section 1983 claim as a **BIVENS** claim.
BARR v. ABRAMS, 810 F.2d 358 (2nd Circ. 1987); See also **DALOIA v. ROSE**, 849 F.2d 74 (2nd Circ) cert den. 488 US 898. A **BIVENS** claim permits victims to seek damages against federal official(s) for their constitutional violations in the absence of a specific statute, naming that federal officer as defendant. See **CARLSON v. GREEN**, 446 U.S. 14 (1980).
5. Should the court not convert the complaint to a **Bivens** complaint on its own motion, plaintiff seeks permission to file an amended complaint pursuant to FRCP 15(a), which permission should be liberally granted pursuant to statute. Annexed hereto as Exhibit A is a proposed amended complaint.
6. Plaintiff is not seeking to add parties, change dates, or alter the basic underlying theory of liability; rather plaintiff merely amends the declared source of the subject matter jurisdiction, and there would be no prejudice to defendant.
7. Thus it is requested that the court, either through its own motion of converting the 42 U.S.C. 1983 case to a **BIVENS** claim, or by granting plaintiff leave to file and serve an amended complaint, and/or permit the cause of action seeking damages against the federal official for the constitutional violations against plaintiff to survive.

18 U.S.C. 4042 DOES CREATE CAUSE OF ACTION

8. Defendant asserts that 18 U.S.C. 4042, **Duties of The Bureau of Prisons**, does not create a private cause of action. Case law indicates otherwise.
9. In particular 18 U.S.C. 4042(a)(2) mandates that the Bureau "provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons

charged with or convicted of offenses against the United States, or held as witnesses or otherwise”.

10. That duty was recognized as a private cause of action in **JONES v UNITED STATES**, 91 F. 3d 623 (3rd Circ 1996), holding that prison official(s) do owe a duty of care to prisoners under 18 U.S.C. 4042, and in that case precluded a summary judgement motion by defendant.
11. Herein, if the prison official(s) maliciously, negligently or recklessly ignored the Warden’s directives regarding plaintiff’s bedding needs due to his special needs, there is clearly a question of fact whether the prison’s duty of care to the plaintiff was breached (See plaintiff declaration, defendant’s exhibit 2A- intake summary and Document 2A p.39 as well as 28 CFR 541- SHU conditions); it is also noted that the facility was aware of plaintiff’s multiple disabilities due to a prior period of incarceration there. It is also noted plaintiff claims **no** mattress during his stint in SHU, not a floor mattress, in violation of the **Warden’s** directive and creating a question of fact as to defendants violation.

PLAINTIFF EXHAUSTED ADMINISTRATIVE REMEDIES

12. Annexed as Exhibit B is a copy of the original claim filed by plaintiff *pro se* against the prison; annexed as Exhibit C is the letter from the Department of Justice advising plaintiff he had exhausted his administrative remedies.
13. Defendant in this matter argues that the claim should have been properly filed under 28 CFR 542.10 et seq., and thus plaintiff has not exhausted his administrative remedies as the claim was allegedly filed under the Federal

Tort Claims Act 28 U.S.C. 2672

14. However, defendant disregards that plaintiff was provided with the claim form annexed hereto as Exhibit B after reporting this incident; under 28 CFR 542.11, the prison facility is mandated to have a procedure for receiving these claims. In this matter, defendant is using its own failure to follow the federal regulation guidelines as a sword seeking dismissal.
15. It was the claim form annexed as Exhibit B that the facility provided to plaintiff in response to his notice to them; annexed as Exhibit C was defendant's ultimate response thereto. It was in fact defendant's own doing in treating the claim as a Federal Tort Claims Act claim, and not a claim under 42 U.S.C. 1997 as it was mandated to do under 28 CFR Part 542.. This is not a situation where plaintiff has failed to file an administrative claim thus precluding federal suit, but rather a case where a *pro se* inmate communicated a claim, and it was handled improperly by defendant in violation of 28 CFR 542.11.
16. In any event, since plaintiff was released from McKean prior to commencement of this suit, the requirement to exhaust administrative remedies was not applicable. **GRIEG v. GOORD**, 169 F.3d 165 (2nd Circ. 1999)

PLEADING WARDEN'S ACTS

17. The complaint at issue alleges specific acts to make out a prima facie case under both the statutory provision, 18 USC 4042 as well as the **BIVENS** and negligence claim.

18. As set forth in plaintiff's intake records (defendant's exhibit 2A), defendant was well aware of plaintiff's multiple disabilities, medications and special needs. This was also plaintiff's second stay at the facility (See declaration of plaintiff).
19. The warden is charged with the ultimate responsibility for the facility and its staff. Not only was the warden and facility aware of plaintiff's disabilities and special needs at intake and due to his prior stay, but the Warden became personally involved with plaintiff's special bedding/mattress needs. See Defendant's Exhibit 2a p. 13, and Declaration of Dennis Olson MD, p. 3 Paragraph f; and declaration of plaintiff.
20. Once the warden took the affirmative step to get personally involved with plaintiff's special needs he had a continuing obligation to ensure his directives were followed.
21. Once the warden personally directed the employees regarding the bedding/mattress issue, this direction certainly creates the "personal involvement" that defendant argues did not exist. See **McCANN v. COUGHLIN**, 698 F.2d 121 (2nd Circ 1983); **US v. OSWALD**, 510 F.2d 583, **WILLIAMS v. SMITH** 781 F.2d 319, providing various scenarios of personal involvement.
22. Personal involvement is usually a question of fact and thus summary judgement is inappropriate. **WILLIAMS v. SMITH** 781 F.2d 319, FRCP 56(c).

EIGHTH AMENDMENT VIOLATIONS

23. Defendant oversimplifies plaintiff's claims of his violation of rights. In fact defendant's conduct involves a three act/event violation by defendant.
24. Plaintiff presented to the facility with multiple disabilities and special needs; After the Warden personally intervened January 26, 2004 regarding providing for plaintiff's special needs, defendants' conduct thereafter amounted to Eight Amendment violation(s) by 1) disregarding plaintiff's medical diagnoses and limitations and using excessive force in addressing plaintiff's alleged conduct of failing to get out of bed and handcuffing him behind his back, and 2) thereafter forcing him to sleep on a concrete floor for 2 days in direct contradiction to Warden's directive (see plaintiff declaration), and 3) then failing to attend to his new medical and continued special needs as a result of the first two instances of misconduct.
25. When plaintiff presented to the facility for intake, he was diagnosed with, among other things, Cerebral Palsy, Scoliosis, adjustment disorder, chronic pain and asthma and prescribed various medication (See Olson Declaration) as well as instructions regarding his bedding.
26. He also continued to complain of pain thereafter, and prior to the 3/7/04 incident. His posture and inability to ambulate would be clearly observable to the guards at such facility and their physical restraint with handcuffs placed behind plaintiff's back creates a question of fact as to whether that conduct would be construed as cruel and inhuman.
27. The medical records submitted by defendant provide that after his release

from SHU in March, he presented to the medical staff as an emergency (Defendant's 2A, p. 14) with complaints of pain and no medication. He was given a sling, prescription for double mattress and given pain medication again. His limbs had atrophied and had distorted posture as a result of defendant's conduct (see OLSON DECLARATION p. 4 paragraph I).

28. Defendant responded by placing plaintiff in 10 man cell where he was forced to sleep on a metal cot in violation of its own directive exacerbating the conditions already worsened by defendant's force and confinement as set forth above.

29. It is submitted that the course of conduct as set forth above by defendant towards plaintiff raises questions of fact as to the propriety of its actions.

COMPLAINT DOES NOT SOUND IN MEDICAL MALPRACTICE

30. The law differentiates between claims sounding in medical malpractice and those claiming a failure to provide medical treatment or indifference to medical needs. If there is no medical treatment at all, it is not necessary to show a deviation from good and acceptable medical standards. See **JONES v. USA**, 91 F.3d 23 (3rd Cir. 1996); **ROUSE v. PLANTIER**, 183 F.3d 208 (3rd Cir. 1999); See also **SCONIERS v. JARVIS**, 458 F.Supp 37.

31. Once plaintiff was released from SHU and he presented with "his limbs atrophied" and complained of severe pain and numbness in extremities, defendant had an obligation to provide treatment, but instead placed him in a 10 person cell with no mattress, and confiscated his pain medications. This showed a cruel and inhuman disregard that does not sound in medical

malpractice.

WHEREFORE it is respectfully requested that defendant's motion be denied in its entirety and/or plaintiff's cross-motion be granted together with such other and further relief as the court deems appropriate.

Dated: October 31, 2005

A handwritten signature in black ink, appearing to read 'M. Shatkin', is written over a horizontal line.

MARC SHATKIN, ESQ.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

ABIMAEI MANSO-DIAZ

Plaintiff

v.

CIVIL ACTION NO. 05-192E
JUDGE McLAUGHLIN

JAMES F. SHERMAN, WARDEN
McKEAN FEDERAL CORRECTION INSTITUTION
Defendant

DECLARATION OF ABIMAEI MANSO-DIAZ

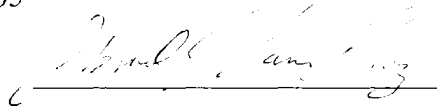
Abimael Manso-Diaz, Esq. hereby declare and states as follows:

1. I am the plaintiff in this proceeding and submit this declaration in opposition to the summary judgement motion/motion to dismiss of defendants.
2. When I entered the facility in December 2003 my various disabilities including Cerebral Palsy and Scoliosis were documented to the facility and are readily visible by my physical appearance, gait and posture. Additionally I had been an inmate at the facility on a previous occasion and my special needs and medications were addressed during that period.
3. After I entered the facility, my medications were altered and the side effects of the new medications caused severe drowsiness.
4. On 3/7/04, I did not wake for the 4pm count and despite my explanation was ordered to SHU; I in no way physically resisted and requested that any handcuffs only be placed in front due to my condition. The guards ignored this, physically manhandled me and cuffed me in the rear despite request not to.

5. In SHU I was forced to sleep on the floor with no mattress for two days despite my advisement of my disabilities and request for a mattress.
6. After complaints of severe pain after my release from SHU, I was placed in a 10 person non-handicap accessible cell with a metal cot and no mattress.
7. My complaints to staff were ignored and my pain in my shoulder, neck, back, and leg worsened and were not addressed and continue to date.

I declare under the penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this ¹⁴~~8~~ day of September 2005

A handwritten signature in cursive script, appearing to read "Abimael Manso-Diaz", is written over a horizontal line.

ABIMAEI MANSO-DIAZ

CERTIFICATE OF SERVICE

I hereby certify that a true and correct and copy of the within NOTICE OF CROSS-MOTION AND RESPONDING PAPERS was served by ordinary mail, by placing the same in a pre-paid envelope under the exclusive care of the United States Post office addressed to:

United States Attorney
Michael C. Colville, Esq
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, Pennsylvania 15219

Dated: November 9, 2005



MARC SHATKIN, ESQ.

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ABIMAEL MANSO-DIAZ
444 Fargo
Buffalo, NY 14213

Plaintiff

AMENDED COMPLAINT

Docket#

v.

JAMES F. SHERMAN, WARDEN and
McKEAN FEDERAL CORRECTION INSTITUTION
P.O. Box 5000
Bradford, PA 16701

Defendants

1. Jurisdiction of this court is invoked pursuant to 18 USC 4042, Eighth Amendment and diversity jurisdiction as well as the substantive rights of the plaintiff created under the Constitution of the United States.
2. On or about December 16, 2003 plaintiff was placed in McKean Correctional pursuant to a sentence of the Federal Courts and was released on May 11, 2004; said facility is charged with certain duties to its prisoners pursuant to 18 USC.4042 as well as the constitution and common law principles.
3. Defendant James F. Sherman is the warden of McKean Federal Correctional Facility, and as such is charged with the responsibility for the care and management of the prisoners confined to such facility as well as the oversight and direction of the employees of said facility.
4. Upon intake to the defendant facility, plaintiff presented with "multiple medical problems and disabilities" including Cerebral Palsy, Scoliosis, Asthma, and Adjustment Disorder as well as indications of prescription medications.

care required for the injuries caused by defendant , was maliciously and sadistically forced to sleep on concrete flooring causing further damage and injury as set forth below.

FOR A FIRST SEPARATE AND DISTINCT CAUSE OF ACTION

11. Repeats and re-alleges paragraphs 1-10.
12. Defendants, jointly or severally, by the conduct alleged above, failed to meet the medical and special needs and assistance of a disabled prisoner in order to permit a minimally decent standard of living in violation of his 8th Amendment constitutional rights as well as 18 U.S.C. 4042, and as result thereof, plaintiff has been damaged in the amount of \$150,000.

FOR A SECOND SEPARATE AND DISTINCT CAUSE OF ACTION

13. Repeats and re-alleges paragraphs 1-10.
14. Defendant, after actual and constructive notice of plaintiff's disabilities and physical limitations, negligently, wantonly and in a cruel and inhuman manner, improperly handcuffed plaintiff behind his back when no force was appropriate or called for, injuring plaintiff and thereafter failing to provide proper medical treatment and other care, causing injuries and damages to plaintiff in the amount of \$250,000.

WHEREFORE, plaintiff requests judgement against defendant as follows:

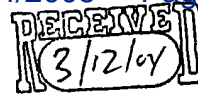
1. On the first cause of action in the amount of \$150,000.
2. On the second cause of action in the amount of \$250,000.
3. Together with attorneys fees and the costs and disbursements of this action.

Dated: October 27, 2005

Yours etc.,

SHATKIN & SHATKIN
Attorneys for plaintiff
434 Delaware Avenue
Buffalo, New York 14202
716-842-05550

EXHIBIT B



SF 95 (face)

CLAIM FOR DAMAGE, INJURY, OR DEATH	INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.				FORM APPROVED OMB NO. 1105-0008
1. Submit To Appropriate Federal Agency: Federal Bureau of Prisons - NERO U.S. Customs House, 7th Floor 2nd & Chestnut Streets Philadelphia, PA. 16701-0980			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and ZIP Code) A: Manso-Diaz, # 09105-055, FCI McKean Post Office Box 8000, Bradford, PA. 16701-0980		
3. TYPE OF EMPLOYMENT N/A <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 11/25/66	5. MARITAL STATUS married	6. DATE AND DAY OF ACCIDENT est. 3/7/04 and on	7. TIME (A.M. OR P.M.) est. 16:00 and on	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) see attached					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and ZIP Code) N/A					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on the reverse side.) N/A					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. See attached					
11. WITNESSES					
NAME		ADDRESS (Number, street, city, State, and ZIP Code)			
N/A					
12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE N/A	12b. PERSONAL INJURY \$10,000,000.00	12c. WRONGFUL DEATH N/A	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$10,000,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>[Signature]</i> CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			13b. Phone Number of signatory None	14. DATE OF CLAIM 3/21/04	
The claimant shall forfeit and pay to the United States the sum of \$2,000, plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

CONTINUATION STANDARD FORM 95
MANSO-DIAZ, A. 09105-055, FCI MCK, UNIT AA

21 MAR 04

CONTINUATION BLOCK 8 & 10:

On March 7, 2004 at approximately 16:00, I was handcuffed and taken to the SHU by BOP personnel. I presently suffer from CEREBRAL PALSY and SCOLIOSIS, and this disability is readily recognizable as well as well documented. During my placement in the SHU, BOP personnel treated me in an arbitrary, capricious, and erroneous manner. They were negligent towards my serious medical needs. Staff forcefully twisted my disabled arm in order to handcuff me behind my back, causing painful and possibly permanent injuries to my lower back, left neck, and left scapula. This was done in a negligent manner by staff, notwithstanding my repeated requests to staff that they handcuff me in front, rather in the back, due to my disabilities.

On March 7, 2004, I was sleeping when they called 4 PM count. This was due to the battery of prescribed medication which causes sleepyness. This medication is necessary due to my illness. These medications also cause dizziness.

Upon being taken to the Lieutenant's Office by staff, I was ordered to be taken to the SHU by Lt. Roy. At that time, I once again requested Lt. Roy, due to my serious illness and disabilities, that I be handcuffed in the front, rather than the back. Lt. Roy responded, "who do you think you are to demand that you be cuffed to the front? You are just an inmate. I don't (expletive deleted) care about what you are suffering from! Welcome to McKean!" At that time, escorting officers twisted my arm out of place and caused injuries.

Upon arriving in the SHU, I once again advised officers of my severe disabilities, and advised them, once again, that these are well documented in my medical and BOP files. they expressed indifference towards my requests. In the SHU I was forced to sleep on the floor.

Upon my release from the SHU back to Unit AA, I was once again forced to sleep on a metal bunk, without a mattress, and transfered from a handicapped cell into a multi-person dorm which was not handicapped accessible.

The negligence by BOP staff caused extreme pain and suffering, and possibly debilitating injuries.

Prisoners with disabilities (or, handicaps) are protected both by the Constitution and federal statutes. Under the Constitution, prison officials must meet the medical needs of disabled prisoners and furnish the assistance that they require in order to live a minimally decent life in prison. As one court put it, "the prison authorities must take the prisoner as they find him and provide facilities compatible with his physical condition that meet civilized standards to decency." In re Coca, 149 Cal.Rptr. 465, 47-71 (1978); see also Cameron v. Tones, 990 F.2d 14, 21 (1st Cir. 1993). This was not done in the instant case. My treatment also violated the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq; 28 CFR § 35.190. It also violates the Rehabilitation Act. 29 U.S.C. § 706(7)(B); School Bd. of Nassau County v. Arline, 480 U.S. 273, 282-86 (1987).

It is clear from the facts of this case that staff were negligent towards my serious medical needs and that they acted maliciously, sadistically, and wantonly, and therefore forms a basis for a claim under the FTCA. Whitley v. Albers, 475 U.S. 312, 320-21, and 22 (1986).

EXHIBIT C



Federal Bureau of Prisons
Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House - 7th Floor
2nd & Chestnut Streets
Philadelphia, PA. 19106

September 15, 2004

Marc Shatkin, Attorney
135 W. Tupper Street
Buffalo, New York 14201

SEP 21 2004

RE: Administrative Tort Claim No. TRT-NER-2004-02561
On Behalf of Abimael Manso-Diaz, Reg. No. 09105-055

Dear Mr. Shatkin:

This is in response to the Administrative Tort Claim, No. TRT-NER-2004-02561, filed on behalf of Abimael Manso-Diaz. It was received by this agency on March 26, 2004, and is being considered for settlement as provided by the Federal Tort Claims Act (FTCA) 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. Your client seeks compensatory damages in the amount of \$10,000,000.00 for an alleged personal injury. Specifically, he claims staff at the Federal Correctional Institution (FCI), McKean, Pennsylvania, failed to provide appropriate treatment to him as a handicapped individual, causing him extreme pain, suffering and possibly debilitating injuries.

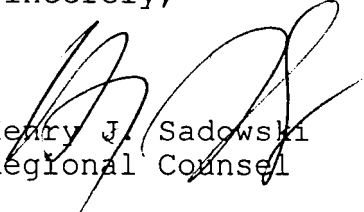
After careful review of your claim, I have decided not to offer a settlement. Investigation reveals your client arrived at FCI McKean on December 16, 2003, with a medical history of cerebral palsy, scoliosis, reflux disease, asthma and an adjustment disorder. On March 7, 2004, he was one of several inmates who were being disruptive in the housing unit by failing to stand count, becoming insolent toward staff and refusing to obey staff orders. When being placed in restraints for escort to the Special Housing Unit, your client did not advise staff of his medical condition which may have prevented staff from applying cuffs from the rear. After his placement in the SHU, your client was assigned to a cell floor with a mattress, due to temporary overcrowded conditions. Your client was removed from the SHU on March 9, 2004, and returned to a cell for disabled inmates. However, after he was seen by the Unit Discipline Committee (UDC) for his misconduct on March 7, 2004, your client was sanctioned to the loss of a two-man room for a period of 180 days. Accordingly, he was moved to a ten-man cell. The medical record indicates your client was examined on March 11, 2004, after he complained of pain secondary to being placed in the SHU. No injuries or permanent damages were noted at that time. Your client's condition does not prevent him from being restrained

Marc Shatkin, Attorney
On Behalf of Abimael Manso-Diaz, Reg. No. 09105-055
Claim No. TRT-NER-2004-02561
Page Two

from behind. There is no evidence to suggest your client suffered any type of injury as the result of negligence on the part of any Bureau of Prisons' employee.

Accordingly, your claim is denied. If you are dissatisfied with this decision, you may seek reconsideration from this office or bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,



Henry J. Sadowski
Regional Counsel

cc: James F. Sherman, Warden, FCI McKean

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

ABIMAEL MANSO-DIAZ

Plaintiff

v.

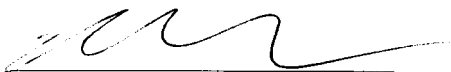
CIVIL ACTION NO. 05-192E
CERTIFICATE OF SERVICE

JAMES F. SHERMAN, WARDEN
McKEAN FEDERAL CORRECTION INSTITUTION
Defendant

I hereby certify that a true and correct copy of the within NOTICE OF CROSS-MOTION and RESPONDING PAPERS was served by ordinary mail, by placing the same in a pre-paid envelope under the exclusive care of the United States Post office addressed to:

United States Attorney
Michael C. Colville, Esq
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, Pennsylvania 15219

Dated: November 9, 2005



MARC SHATKIN, ESQ.
SHATKIN & SHATKIN
Attorneys for plaintiff
434 Delaware Avenue
Buffalo, New York 14202
716-842-0550